



Washington State Patrol - Criminal Investigation Division Investigation of Officer-Involved Use of Deadly Force and In-Custody Death Protocol

Purpose

The Criminal Investigation Division's Criminal Investigation Unit (CIU) may be called upon to investigate officer-involved incidents that involve death, great bodily harm, or substantial bodily harm, as members of a multi-agency Independent Investigative Team (IIT) or as a single law enforcement agency. In instances where the CIU is working as part of a multi-agency IIT, the CIU will follow the investigative protocols adopted by that specific multi-agency IIT. In instances where the CIU is operating as a single law enforcement agency, the following protocols shall be followed.

In accordance with RCW 10.114.011 and chapter 139-12 WAC, the CIU shall conduct an independent criminal investigation to inform any determination of whether the use of deadly force met the good faith standard established in RCW 9A.16.040 and satisfied other applicable laws. The CIU does not provide recommendations on whether a prosecutor should or should not file criminal charges. The completed CIU investigation shall be forwarded to the prosecuting attorney for review. The prosecuting authority reviews the completed investigation and all facts to make a charging decision.

The CIU shall meet the definition and criteria of Independent Investigative Team (IIT) as defined by chapter 139-12 WAC. The CIU Commander is responsible for ensuring that the CIU complies with relevant statutes and administrative rules as they relate to officer-involved use of deadly force investigations. The CIU seeks to enhance public trust in the integrity of independent investigations involving police use of deadly force by adhering to the five identified principles:

1. Independence;
2. Transparency;
3. Communication;
4. Credible process; and
5. Credible investigators.

CIU criminal investigations shall follow the rules of law established by the state and federal constitutions and statutory and case law applicable to criminal investigations. The independent investigation shall be performed in a manner that provides both the appearance and the reality of an objective, thorough, fair, complete and professional investigation that is free of conflicts of interest.

Mission

In accordance with state law, including RCW 10.114.011 and chapter 139-12 WAC, the CIU's mission is:

- A. To perform the criminal investigation of officer-involved incidents involving death, great bodily harm, or substantial bodily harm;
- B. To apply best practices and guidelines developed and adopted by the Criminal Justice Training Commission (CJTC) as they relate to investigations of officer-involved use of deadly force;
- C. To promote public trust by conducting independent, objective, professional, and consistent investigations of officer-involved incidents involving death, great bodily harm, or substantial bodily harm;
- D. To maximize the availability and sharing of the latest technological equipment and techniques;
- E. To consolidate and share the skills of the most experienced and qualified commanders, supervisors and investigators within the agency;
- F. To conduct thorough investigations in a timely fashion.

Criminal Investigation and Involved Agency Administrative Investigation/Review

The CIU shall only conduct the criminal investigation of an incident. The CIU shall not conduct administrative investigations/reviews of incidents. The involved agency is responsible for any administrative investigation/review of officer-involved incidents. The CIU criminal investigation has investigative priority over the administrative investigation/review. No member of the involved agency, to include personnel conducting an administrative investigation/review, will be involved in a CIU criminal investigation. The CIU shall not review or use any portion of an administrative investigation/review in the criminal investigation.

No information about the CIU's ongoing investigation will be shared with any member of the involved agency.

The completed CIU criminal investigation will be available to the involved agency for the purposes of an administrative investigation/review unless otherwise prohibited by law.

Definitions

A. COMPLETED INVESTIGATION

As defined by WAC 139-12-020, the “completed investigation” means the final work product of the CIU for the purpose of informing the prosecuting authority’s charging decision. An independent investigation must be completed to inform any determination of whether the use of deadly force met the good faith standards established in RCW 9A.16.040 and satisfied other applicable laws.

B. DEADLY FORCE

As defined by RCW 9A.16.010, “deadly force” means the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury.

C. FATAL INJURY

Injury resulting in death.

D. GOOD FAITH STANDARD

As defined by RCW 9A.16.040, the “good faith” is an objective standard which shall consider all the facts and circumstances and information known to the officer at the time to determine whether a similarly situated reasonable officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual.

E. GREAT BODILY HARM

As defined by RCW 9A.04.110, “great bodily harm” means bodily injury which creates a probability of death or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ.

F. SUBSTANTIAL BODILY HARM

As defined by RCW 9A.04.110, “substantial bodily harm” means bodily injury which involves a temporary but substantial disfigurement or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part.

G. NECESSARY

As defined by RCW 9A.16.010, “necessary” means that no reasonable effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to affect the lawful purpose intended.

H. OFFICER-INVOLVED INCIDENT

Officer-involved uses of force that involve death, substantial bodily harm, or great bodily harm, where the Washington State Patrol does not employ the involved law enforcement officer. An officer-involved incident may include an incident where an

officer sustained an injury but did not use force. An officer-involved incident may include, but is not limited to:

1. Intentional or accidental shootings, including police tactical incidents involving specialized response units.
2. Intentional or accidental use of any other dangerous or deadly weapon.
3. Assaults upon law enforcement officers, or assaults on other law enforcement employees who are on duty or are acting in a law enforcement capacity.
4. Attempts by law enforcement employees to make arrests or to otherwise gain physical control for a law enforcement purpose.
5. Any fatal injury, great bodily harm, or substantial bodily harm received while a person is in police custody, including custodial trauma or custodial suicide.

F. INVOLVED AGENCY

The agency that employs or supervises the officer(s) who used deadly force. There can be more than one “involved agency.”

G. INVOLVED OFFICER

The law enforcement officer who used deadly force in connection with an incident involving death, great bodily harm, or substantial bodily harm.

H. PROSECUTING AUTHORITY

The agency with jurisdiction to file criminal charges based on the criminal investigation. A county prosecuting attorney’s office or the Attorney General’s Office may serve as the prosecuting authority.

I. VENUE COUNTY

The county in which the incident occurs.

J. VENUE AGENCY

The agency or agencies within whose geographical jurisdiction the officer-involved incident occurs. When an officer-involved incident occurs in part in two or more jurisdictions, each of those jurisdictions is a venue agency.

K. WITNESS OFFICER

An officer who witnessed the use of force by the involved officer, and whose action was not a use of deadly force, or potentially deadly force, in connection with an incident involving a death, great bodily harm, or substantial bodily harm.

CIU Members

The names of the members, supervisors, commanders, and non-law enforcement community representatives of the CIU's investigative team will be available to the public.

A. SUPERVISORS

The CIU Supervisors must have no work history of serious misconduct, pattern of sustained complaints, dishonorable behavior, or any personal history of bias or prejudice against community members that may be impacted by the police use of deadly force. To this end, the CIU Commander will review the Office of Professional Standards histories of each CIU Supervisor.

The CIU Commander and the non-law enforcement representatives will serve on the interview panel for each CIU Supervisor applicant. The CIU Commander may designate the CIU Assistant Commander to serve on the interview panel for the CIU Supervisor applicants. The CIU Commander shall consider the recommendations of the interview panel and select the applicant best-suited to serve as the supervisor for the needs of an investigation. CIU Supervisors shall report directly to the CIU Assistant Commander during an investigation.

B. QUALIFIED LEAD INVESTIGATOR CERTIFICATION

1. The Washington Criminal Justice Training Commission (CJTC) shall issue an "IIT Qualified Lead Investigator" certification to ensure those assigned to lead a CIU investigation meet the training requirement by the end of 2020.
2. Evidence technicians are not required to obtain the IIT Qualified Lead Investigator certification.

C. INVESTIGATORS

The CIU Investigators must have no work history of serious misconduct, pattern of sustained complaints, dishonorable behavior, or any personal history of bias or prejudice against community members that may be impacted by the police use of deadly force. To this end, the CIU Commander will review the Office of Professional Standards histories of each CIU Investigator.

The CIU Commander and the non-law enforcement representatives will serve of the interview panel for the CIU Investigator applicant. The CIU Commander may designate the CIU Assistant Commander to serve on the interview panel for the CIU Investigator applicants. The CIU Commander shall consider the recommendations of the interview panel and select the applicants best-suited to serve as investigators for the needs of an investigation. Investigators shall report directly to the CIU Supervisor during an investigation.

D. PROSECUTOR REPRESENTATIVE

A prosecuting authority may be assigned to the CIU to serve as a legal consultant in the criminal investigation. The prosecuting authority representative may provide consultation on search warrants, special inquiry proceedings, special inquiry subpoenas, and issues regarding statements by law enforcement officers when *Garrity* or other issues arise.

E. COMMUNITY REPRESENTATIVE

Pursuant to chapter 139-12 WAC, at least two non-law enforcement community representatives will be assigned as non-investigative participants of the CIU.

The non-law enforcement community representatives should have credibility with and ties to the communities impacted by police use of deadly force. The agency shall administer a transparent process for soliciting names and creating a roster of individuals willing to serve in this capacity for each CIU. The community representatives assigned to the CIU investigation must be chosen from this list, or in cases where the WSP does not have community representatives available, will use representatives provided by the involved agency's executive.

Pursuant to chapter 139-12 WAC, community representatives shall:

1. Participate directly in the vetting, interviewing, and/or selection of CIU personnel;
2. Review conflict of interest statements submitted within 72 hours of a CIU activation.
3. Be present at the briefings with the involved agency or venue agency's Chief/Sheriff;
4. Have access to the completed CIU investigation file;
5. Be provided a copy of all CIU media releases prior to release;
6. Review notification of equipment used from the involved or venue agency;
7. Sign a binding Confidentiality Agreement.

The CIU Commander shall ensure that each activated community representative signs a binding confidentiality agreement at the beginning of each CIU activation. That confidentiality agreement shall remain in effect until the prosecutor either declines to file charges or when the criminal case is concluded.

If the confidentiality agreement is violated, the community representative shall be immediately and permanently removed from the IIT. Additionally, per the Criminal

Justice Training Commission (CJTC), the community representative will be automatically disqualified from serving on any IIT in any region in Washington State

Conflict of Interest

Within 72 hours of activation, all involved CIU members and community representatives must complete a CJTC "Conflict of Interest" assessment tool regarding any connection to the involved officer(s). The conflict of interest assessment tool will be reviewed by the CIU Supervisor and the community representatives activated for that particular investigation.

Confidentiality

Information obtained by CIU investigations will generally be confidential while the investigation is active. CIU members shall not voluntarily share confidential information with individuals other than CIU members.

Once the investigation is complete, the investigative file will be subject to requests under the Public Records Act unless an exemption applies to a record or specific information in the file.

Requesting CIU Assistance

The on-scene venue agency and/or involved agency Chief/Sheriff shall make a formal request for CIU assistance to the Chief of the Washington State Patrol or his/her designee. The CIU Commander shall be notified of the request and contact the requesting Chief/Sheriff to gather information to determine whether or not the request meets the CIU criteria and the local CIU has adequate resources to conduct the investigation. This information will be provided to the Washington State Patrol Chief or his/her designee for a final approval decision. If the request is approved, the CIU Commander will notify the venue agency and/or involved agency Chief/Sheriff and activate the CIU members for response.

Upon the request and approval for the CIU, the CIU Commander shall designate the CIU Assistant Commander and CIU Supervisor to lead the investigation. The CIU Assistant Commander or CIU Supervisor, upon notification, should call the venue agency supervisor at the scene to obtain all available information. The CIU Assistant Commander and CIU Supervisor shall determine what and how many CIU resources are needed. The CIU Assistant Commander and CIU Supervisor shall initiate the proper CIU notification process to ensure needed personnel are notified and respond.

Venue Agency Responsibilities

- A. Venue agency first responders should ensure that emergency life saving measures are taken.
- B. The on-scene venue agency supervisor may attempt to obtain critical information pertinent to the safety of officers and citizens. Refer to the section “Obtaining Critical Information.”
- C. The venue agency should ensure proper crime scene protection. This includes, but is not limited to, immediately securing the crime scene, controlling access into the crime scene, location and preservation of evanescent evidence, and recording the names of individuals who have entered the crime scene. Written reports are expected from those who enter a designated crime scene.
- D. The venue agency should attempt to identify witnesses who are present at the scene. Potential witnesses (including witness officers) should be sequestered as soon as reasonably possible. Witness officers should be directed by their employer agency supervisor or commander to not discuss details of the case with the involved officer or other witness officers until the CIU has completed their interviews with those officers.
- E. If, prior to the arrival of CIU personnel, a person is transported to a hospital with life-threatening or fatal injuries, the venue agency should provide an officer to accompany that person in order to:
 - 1. Locate, preserve, safeguard and maintain the chain of custody for physical evidence.
 - 2. Obtain a dying declaration, spontaneous statement, and/or statement of then-existing, or previous, mental or physical state.
 - 3. Maintain custody of the person if he/she has been arrested.
 - 4. Provide information to medical personnel about the incident that is relevant to treatment, and obtain information from medical personnel relevant to the criminal investigation.
 - 5. Identify relevant people, including witnesses and medical personnel.
- F. If a law enforcement officer has been injured and transported to a hospital, the agency in whose jurisdiction the hospital is located should provide appropriate security and assistance. The employer agency should be responsible for providing necessary assistance to the officer’s family at the hospital.

- G. The venue agency should provide a supervisor or commander who is available at the scene. That person should update CIU personnel upon their arrival at the scene.
- H. The venue agency should make department personnel available to the CIU.
- I. For incidents in which a suspect is taken into custody, the venue agency will coordinate appropriate security measures with the CIU Supervisor and bear the costs of security until the suspect is available for booking. It is understood that special circumstances may dictate that another non-venue agency may provide assistance and security upon request of the venue agency's Chief/Sheriff.
- J. Once the CIU arrives on scene, and the CIU Supervisor has the appropriate resources on scene, the involved agency or venue agency will relinquish control of the scene to the CIU.
- K. The involved agency and venue agency should turn over to the CIU, in a timely manner, all evidence that is in their possession.
- L. The involved agency and venue agency should make all documents, reports, and information on the incident available to the CIU in a timely manner.
- M. The venue agency should allow the use of space and equipment as needed by the CIU.
- N. The venue agency shall maintain perimeter control of the crime scene if requested by the CIU Supervisor.

Use of Involved Agency Specialized Equipment

WAC 139-12-030 prohibits the involved agency participation in any way in the CIU's investigation of police use of deadly force with a limited exception. The CIU may use specialized equipment belonging to the involved agency when:

1. No reasonable alternative exists;
2. The equipment is critical to carrying out the independent investigation; and
3. The use is approved by the CIU commander.

If the CIU uses the involved agency's specialized equipment, the CIU must notify the non-law enforcement community representatives about:

1. Why the involved agency's specialized equipment needs to be used; and

2. The steps taken to appropriately limit the role of any involved agency personnel in facilitating the use of that equipment.

Special Communications

Upon activation of the CIU, the following standards for special communications will occur:

- A. A family member of the person against whom deadly force was used will be notified as soon as they can be located by either the venue agency, involved agency or the CIU, whichever is faster;
 1. Within 24 hours of activation, a member of the Washington State Patrol will be assigned as a family liaison and will keep the family, or a representative of the family's choice, apprised of significant developments in the CIU investigation. The family and the involved agency shall receive advance notice of scheduled press releases.
- B. Neither the involved agency, venue agency, nor CIU shall provide the media with criminal background information of the person against whom deadly force was used. If information is specifically requested, and the release of information is required by the Public Records Act or other applicable laws this information will be provided by the WSP Office of Government and Media Relations or their designee.
- C. If the person against whom deadly force was used is, or is believed to be, a member of a federally recognized tribe:
 1. The involved agency will notify the Governor's Office of Indian Affairs (GOIA) in accordance with [RCW 10.114.021](#)
 2. Within 24 hours of activation, a member of CIU will be assigned as a tribal liaison and keep the tribe (or a representative of the tribe's choice) apprised of significant developments in the CIU investigation.

Obtaining Critical Information

The involved officer may have information that is pertinent to the safety of officers and citizens, as well as the proper preservation of the crime scene. Such information may include, but not be limited to; medical aid that is needed, information necessary to apprehend suspect(s), and identification of perishable evidence. For purposes of this protocol, the reasons or basis for the use of force by an involved officer, or details of that use of force, is not considered critical information.

The venue agency on-scene supervisor may, based upon that agency's training, policy or guidelines, attempt to obtain voluntary critical information from the involved officer

that is reasonably necessary to aid injured persons, apprehend suspect(s) and protect perishable evidence.

All CIU members should be familiar with [Garrity v. New Jersey](#) and the consequences to a criminal investigation of directing or ordering an employee to answer questions.

- A. The CIU investigation shall not review, consider or use any compelled information provided by an involved officer who was directed or ordered to provide such information.
- B. A CIU representative, generally an Assistant Commander, will serve as the “firewall” between the CIU investigators and the involved agency. The purpose of the “firewall” is to prevent inappropriate information sharing (i.e. compelled statements) between the CIU Investigators and the involved agency.
- C. Any supervisor or other agency member who has directed or ordered an employee to answer questions shall immediately report that fact to the first-arriving CIU Investigator upon his/her arrival at the scene.
 - 1. Details of the compelled information learned from the employee shall not be provided to CIU personnel.
- D. The CIU Supervisor shall attempt contact with the involved officer to inquire if he/she was directed or ordered to answer any questions.
 - 1. Details of the compelled information shall not be obtained.
 - 2. The CIU Supervisor shall ensure that no compelled information is used as part of the CIU investigation unless authorized by the prosecuting authority.
- E. If any member of the CIU investigative team receives a compelled statement, the member must immediately report it to their supervisor and the member must discontinue participation in the investigation unless the prosecuting authority deems such actions unnecessary. The information will be removed or isolated from the remaining investigation unless the prosecuting authority deems such action unnecessary.

Removing Involved Officers from the Scene

If, upon arrival of CIU personnel, an involved officer(s) or witness officer(s) are still present at the scene, the CIU Supervisor or Investigator will coordinate with the venue and employer agency supervisor or incident commander the removal of those officers from the scene.

To assure witness credibility these officers should, whether they are removed from the scene before or after CIU arrival, be kept separated from each other until statements

are obtained by CIU Investigators. Witness officers should be directed by their involved agency supervisor or commander to not discuss details of the case with the involved officer or other witness officers until CIU has completed their interviews with those officers.

Documenting the Involved Officer's Condition

CIU Investigators should photograph and document any injuries the involved officer, or any other officer, may have received. The involved officer's clothing will also be photographed and documented. The clothing may be seized as evidence.

Seizing an Officer's Weapon

If, upon arrival of CIU personnel, an involved officer is still in possession of a firearm or other weapon that was used in the incident, the CIU Supervisor will coordinate obtaining that firearm or weapon with the involved agency supervisor.

The CIU Supervisor shall ensure an inspection is conducted of all witness officer's firearms, ammunition or other weapons. These inspections will be coordinated through that officer's involved agency supervisor.

Relieving Involved Officers of Duty

The CIU does not have the authority to, and will not be involved in, relieving any involved officer(s) or witness officer(s) of their duties. Any such action will be the responsibility of the involved agency.

Interviewing Law Enforcement Employees

It is recognized that officers who justifiably use deadly force as a part of their official duties and responsibilities may be subject to civil litigation. It is acknowledged that the CIU criminal investigation interview with the involved officer(s) and witness officer(s) may be used by the involved agency in the administrative investigation/review of the incident to determine if any policy violations may have occurred. However, involved agency personnel conducting an administrative investigation/review should not be involved in a CIU investigation, nor will they engage in CIU interviews with involved or witness officers.

With the officer's consent, formal interviews by CIU members with the involved officer(s) and witness officer(s) will be digitally recorded and transcribed.

A. Interview with the involved officer:

1. The involved officer has the same constitutional rights as any other citizen. The officer has the right to have legal counsel present during the interview.

The officer should be provided a reasonable time to consult with legal counsel prior to the formal interview.

2. If the involved officer requests a guild representative (other than an attorney) be present during the interview, the CIU interviewer(s) will notify the CIU Supervisor. The CIU Supervisor will then consult with the prosecuting authority. A decision will then be made as to whether a guild representative will be allowed to be present during the interview. If a guild representative is allowed to sit in on the interview, the representative will not be allowed to interfere with, or obstruct, the interview process.
3. CIU Investigators shall consult with the prosecuting authority concerning possible advisement of Miranda Rights before a formal interview with the involved officer. There may be case-specific circumstances, which may prompt the prosecuting authority to request an involved officer be advised of Miranda Rights before the CIU interview. If such a request is made, CIU Investigators shall advise the involved officer of Miranda Rights at the beginning of the interview.
4. Should an involved officer elect to not provide a voluntary, non-compelled statement to CIU Investigators, the prosecuting authority may:
 - a. Request a Coroner's Inquest be convened pursuant to RCW 36.24.020 to aid in determining facts of the case and the cause of death, or
 - b. Request a Special Inquiry Hearing be convened pursuant to RCW 10.27.170.

B. Interview with a witness officer:

1. Interviews with witness officer(s) will likely need to be arranged as soon as reasonably possible after the incident occurred. Witness officers will be interviewed separately.
2. CIU Investigators should be alert for signs the witness officer(s) are traumatized and may need some time to decompress prior to giving a statement.
3. Generally, an officer who is a witness to the use of force and is not involved in the application of force in any manner, and is not a subject of the investigation, does not have a right to guild representation during his/her interview. However, if the witness officer reasonably believes his/her statement may result in discipline, the officer may have right to guild representation during the interview. Under such circumstances, if the officer requests guild representation, he/she may be allowed to have a guild representative present during the interview. If a guild representative is

allowed to sit in on the interview, the representative will not be allowed to interfere with, or obstruct, the interview process.

Autopsy

Autopsies will be coordinated with the venue county coroner representative and will be conducted through the venue county coroner's office. A CIU Investigator may be present during autopsy and take all appropriate investigative steps.

Planned Police Action

If the officer-involved incident is a result of a planned police action (e.g., search warrant service, arrest warrant service, tactical operation), documents and materials associated with the planning and execution of that action shall be turned over to the CIU. Personnel involved in the planning of, and execution of, the planned action shall be interviewed by CIU. Those personnel should not debrief the incident amongst themselves until the last CIU interview is conducted with those involved.

Release of Information/Public Information Officer

The CIU release of public information shall adhere to the following:

- A. Pursuant to chapter 139-12 WAC, the release of public information concerning the criminal investigation will be done only by the Office of Government and Media Relations or designee. The venue agency or involved agency may make their own release of information, but not pertaining to any aspect of the criminal investigation itself, to the public as deemed appropriate by that agency's Chief/Sheriff.
- B. The CIU should release only appropriate and necessary information about the investigation to the public. That information should normally be restricted only to the facts of what occurred, as determined by the CIU investigation. The CIU should not offer any opinions about the actions taken by, or motivation of, any involved parties in the incident. Nor should any speculation or opinions be offered about legal matters. Legal matters are the responsibility of the prosecuting authority. No criminal history information shall be included in the media releases unless specifically requested by the media per WAC 139-12.
- C. Public release of autopsy results by the venue county coroner's office should not take place until consultation with the CIU Supervisor and the venue prosecutor's office. Information that may hinder or obstruct the investigation should not be released.
- D. The following shall receive advance notice of, to include a copy of, any public information released by CIU:

1. The family representative for the person against whom deadly force was used, and
2. The community representatives assigned to the CIU investigation. The CIU will provide a copy of all press releases to the media to the community representatives before release.

Release of Video

If the Chief/Sheriff of the involved agency requests the CIU to release the body-worn or dash camera video, or other investigative information of urgent public interest, the CIU Supervisor shall honor the request if agreed to by the prosecuting authority.

Referral to the Prosecuting Authority

In coordination with the CIU prosecuting authority representative, the CIU Supervisor will present the CIU investigative file to the prosecuting authority for review of filing on any potential criminal charges.

The CIU will provide a final briefing to the prosecuting authority and the involved agency Chief/Sheriff at their request. The two non-law enforcement community representatives will be invited to attend the final briefing.